

**CULTURAL RESOURCE PROTECTION  
PROJECT:  
SAVING THE PAST FOR OUR FUTURE**

*A Partnership Between the  
Shoshone-Paiute Tribes  
and  
Other Governmental Agencies*

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# **Cultural Resource Protection Project: Saving the Past for Our Future**

## **EXECUTIVE SUMMARY**

### **BACKGROUND:**

Today, with the explosive growth in the population of southwest Idaho and the increasing recreational use of the public lands, places and things vital to the cultural and spiritual life of the Shoshone-Paiute Tribes are in danger of disappearing forever under a crush of visitors. The Shoshone-Paiute Tribes and other governmental agencies hold a common concern about the loss of these fragile cultural resources and are committed, through the Owyhee Initiative, to protect them.

### **PURPOSE:**

The partnership is designed to accomplish three things:

1. To develop strategies to protect and preserve both the tangible cultural resources and the intangible cultural traditions and values tied to the land;
2. To develop sources of funding to implement these strategies;
3. To allow the Shoshone-Paiute Tribes to manage its cultural resources and traditional cultural properties on public lands.

### **GOALS AND OBJECTIVES**

The Plan recognizes that the public has a right to access and use the public lands, and asserts that most people would become careful and enthusiastic stewards of fragile cultural resources when educated about their value. With that in mind, issues surrounding four general areas of concern are discussed:

1. Protecting Cultural Resources: Tangible and Intangible
2. Allowing Multiple Use
3. Increasing the Public's Understanding and Appreciation of Resources and Traditions
4. Increasing Public Stewardship

### **STRATEGIES**

The Plan discusses a multi-pronged strategy with six key components:

1. Resource Inventory and Information Administration
2. Aerial Surveillance.
3. Resource Monitoring and On-site Public Contact
4. Site Preparation and Protection
5. Public Education and Building Appreciation
6. Tribal Outreach

### **BUDGET**

The Plan proposes a five-year budget. Early emphasis would be on Public Education and

Building monitoring/enforcement capabilities.

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### ***STATEMENT OF PURPOSE***

Scattered across millions of acres of high desert in the southwest corner of Idaho are the remnants of campsites, villages, hunting blinds, rock inscriptions, trails, monuments, battlegrounds and places of worship and ceremony that tell the story of thousands of years of human life in a remote region. Today these places and things are still a vital part of the culture and traditions of the Shoshone-Paiute Tribes, but they are in danger of disappearing forever under the assaults of modern civilization. The Shoshone-Paiute Tribes are concerned about the loss of these fragile cultural resources and are committed, in partnership, to protect them. The purpose of this partnership is threefold:

To develop strategies to protect and preserve both the tangible cultural resources and the intangible cultural traditions and values tied to the land; to develop sources of funding to implement these strategies; to build and strengthen a working relationship between the Tribes and other interested governmental agencies.

### ***BACKGROUND AND SUMMARY OF THE ISSUES***

#### ***History of People in Southern Idaho***

The Shoshone and Paiute people of Duck Valley have been in what is now Idaho for countless generations. The ancestors of the Duck Valley Shoshone-Paiute inhabited the areas of northern Nevada, southeastern Oregon and southern Idaho for many generations. For a relatively short portion of their long history (a little over one hundred years), the Tribes have been placed on a U.S. Government-established reservation in an area that represents only a tiny portion of the lands they once inhabited. For many years after the Shoshone-Paiute were placed on reservations, the U.S. government pursued a policy of forced acculturation, forbidding the Tribes to practice their traditional religious and cultural ceremonies or even educate their own children or speak their own language. Because of these policies, their traditional culture and even their sense of identity as a people have been threatened and nearly extinguished. In recent years,

however, there has been a rejuvenation of traditional cultural practices on the reservation. In order to practice their religion and sustain their cultural identity, the Shoshone Paiute, like many tribes, require access to, and use and protection of places they consider sacred, both on and off the reservation.

### ***BLM Management of Public Lands***

Today, much of the land outside the reservation that the Shoshone-Paiute consider sacred or view in some way as contributing to the maintenance of their cultural practices are federal lands, managed by the BLM. The Tribes have ties to a vast area of southern Idaho, Northern Nevada and eastern Oregon. While Shoshone-Paiute people have relatively free access to these lands, this access is not exclusive to them. BLM manages most of these lands under multiple-use, meaning that a variety of commercial and recreational uses can occur on the lands as long as these activities are sustainable and have compatible uses. Such commodity uses as grazing, mining and logging have long occurred on public lands. In some cases, these activities degraded natural biological conditions, and in so doing had negative effects on the Shoshone-Paiutes' abilities to engage in traditional practices like gathering of native plants for food or ceremonial uses, or hunting or fishing for game species. Until the 1980s, sacred and traditional use areas important to the Tribes, though diminished in biological productivity, were relatively undisturbed and rarely visited by anyone other than themselves.

### ***Current Issues and Future Trends***

#### ***\*Population Growth in Southwest Idaho***

In the past 20 years the population of urban areas in southwest Idaho has grown more than 65 percent. The Treasure Valley, which includes Boise, Nampa, Caldwell and Meridian, now approaches a population of 500,000. Other surrounding smaller communities like Kuna, Homedale and Marsing are growing rapidly as well. Also during this period, the operations of the U.S. Air Force base in Mountain Home have expanded several times. The most recent expansion, called ETI (Enhanced Training in Idaho), has almost been completed. With this change, a new more complex set of problems face the Tribes in their use of federal lands for sacred and/or traditional practices, and the BLM in its management of these lands.

For many months before, during and after antelope bow season, virtually every water hole and reservoir in the southern parts of the Lower Snake River District has one or more hunting blinds constructed on its banks. The Owyhee and Bruneau-Jarbidge Rivers in the remote southern areas of the desert have seen an approximate 300% increase in recreational boater use from just 12 years ago. There are new and increasing conflicts between public land users, particularly between grazing permittees and recreational users. In some cases, key access roads that pass through private lands have been shut to the public because of these conflicts.

### ***\* Increasing Motor Vehicle Access***

Interest in recreational use of BLM-managed lands is growing rapidly. Not only are there many more people in the region than 20 years ago, but this larger population is more affluent and mobile than ever before. This means that they have leisure time and are statistically quite likely to own a 4-wheel-drive vehicle or an ATV that gives them new ways to explore the remote and formerly inaccessible desert. The Boise and Twin Falls Districts of the BLM have begun to see off-road vehicle impacts in many parts of the District including most of its 21 Wilderness Study Areas where people were rarely seen before.

### ***\* Vandalism of Sacred Sites***

Archaeological sites have been vandalized and looted since the mid 19<sup>th</sup> century. Virtually every recorded archaeological site in the district shows some evidence of disturbance from looting or vandalism. These practices continue today. It is not difficult to determine whether acts of deliberate vandalism or theft of archaeological sites have significantly increased recently. Clearly, though, the opportunity for damage to these places has risen as more people enter formerly little-visited areas.

### ***\* Funding Cuts Resulting in Reduced Field Presence***

Ironically, because of funding, manpower cuts, and workloads shifted to homeland security surveillance, BLM's field presence has diminished as the problems in the field have apparently increased, making sensitive cultural and biological resources more vulnerable than ever to damage, theft and vandalism.

### ***\* "New Age" Uses Conflict with Traditional Sites***

There is a new fascination by "new age" religious groups towards Native American sacred sites and archaeological sites found on remote BLM-managed lands. These groups appear to have associated themselves in varying degree with the religions of Native American and other traditional societies. In several cases documented by BLM and the Tribes, this includes appropriating and sometimes altering Native American sacred sites for their own religious/ceremonial use. Such use, from the Shoshone-Paiute view, represents a threat to the Tribes' continued existence that must be resolved.

Few members of these groups have actually ever met or talked to a Native American person and are unaware that the atrocities visited upon the Tribes by their Euro-American ancestors are still vividly remembered on the reservation.

Understandably, because of the tragic history of the last 150 years, there is no great reservoir of

trust for the federal government or whites in general amongst the Shoshone-Paiute people. The Tribes want polite relations with their neighbors and are willing to work with Owyhee County, the State of Idaho, the BLM and other federal agencies to educate the public on their values in order to protect what is sacred to them, but have no interest in converting the world to their ways.

## ***GOALS AND OBJECTIVES***

### ***Protecting Cultural Resources***

#### ***Tangible and Intangible***

Owyhee County, the BLM and the Shoshone-Paiute Tribes share a common interest in protecting both the tangible remains of Native American culture and the intangible associations of place and custom that are crucial to the maintenance of Shoshone-Paiute culture on the public lands of the Boise and Twin Falls BLM Districts, though the reasons for protecting these resources can vary for each party.

BLM is directed by such laws as The Antiquities Act of 1906, The National Historic Preservation Act of 1966, Executive Order 11593, and the Archaeological Resources Protection Act of 1979 to protect a variety of prehistoric and historic resources like archaeological sites, rock art, historic cabins, etc. found on public lands. The intent of much of this legislation is to protect the *scientific* values of these cultural resources, but federal law (National Historic Preservation Act, Archaeological Resources Protection Act, American Indian Religious Freedom Act (AIRFA), Native American Graves Protection and Repatriation Act (NAGPRA), Executive Order 13007), also clearly identify the need to protect those less tangible Traditional Cultural Property (TCP) values that preserve and maintain the identities of Indian tribes.

While sensitive to the needs of the Tribes in protection of these sites, BLM also views cultural resources as public resources that, in some cases, can be made accessible to the general public for their education and enjoyment without endangering them.

The Shoshone-Paiute are concerned with the protection of these resources from a number of perspectives. Cultural resources can be significant to the Shoshone-Paiute culture for their subsistence, economic, religious/spiritual, medicinal, historical and other values. Any particular resource may be valued at several levels, for example, an object may have spiritual significance in addition to its utilitarian function. The loss or improper use by others of these cultural resources can therefore have a variety of significant impacts on the Shoshone-Paiute culture. For this reason, archaeologists who come in contact with cultural resources considered significant by the Tribes can be viewed with mistrust by the Shoshone-Paiute.

Since the 1980s, the scientific archaeological community and cultural resource managers in the federal government have become somewhat more aware of and sensitive to Native American concerns about archaeology. For example, since 1994 in the Boise and Twin Falls Districts,

prehistoric artifacts discovered in field are seldom collected. They are measured, recorded, photographed and sketched, but usually carefully returned to where they were found, or hidden nearby if they seem vulnerable to theft. This policy is markedly different from just a few years ago, when most diagnostic artifacts were collected and permanently stored at a regional curatorial center. The Native American Graves Protection and Repatriation Act (NAGPRA) recognizes that archaeological sites and objects may have religious or other intangible significance to Tribal members, and it is a right of Native Americans to control the disposition of certain sites and objects. Despite any differences about what cultural resources are and what their value is, the aims of the Owyhee Initiative are similar. All parties wish to stop the alarming loss of a rare, non-renewable resource before it is gone. Since we live in an era of shrinking government with less money and less people to do an increasingly difficult job, our pooling of resources in order to meet a common goal is essential.

### ***Allowing Multiple Use***

The Federal Land Policy and Management Act (FLPMA) mandates that BLM manage public lands on behalf of the public:

“The public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;” 43 USC 1701 Sec. 102 (a) (8).

This means that most lands are accessible and are allowed to be used for a variety of activities by anyone that wants to use them providing that they do not damage their ability to sustain natural, ecological processes or damage or destroy resources protected by law. Included in this implied permission to use the land is use of the land for religious purposes. This means that Native Americans as well as other religious groups have a right to use public lands for worship if such use does not damage the land or its resources. At the same time, the Shoshone-Paiute and other Native American Tribes possess unique rights of sovereignty issuing out of executive orders that established their reservations. Tribal members usually have the sovereign right to continue traditional practices of all kinds on their traditional homelands except for those rights explicitly extinguished by treaty, executive order or other specific mandate. In calculating the balance of maintaining free public access and use of public lands while protecting vulnerable resources, the federal government must also give weight to the Tribes’ sovereign rights.

When unrestrained public use threatens sensitive or fragile values like rare plants, or archaeological sites, or Native American access to traditional cultural sites, BLM has a number of administrative and legal approaches it can employ to reduce or eliminate impacts to these resources such as: closure of an area to public access; fencing to exclude vehicles or livestock; signs; increased surveillance or patrol by staff or law enforcement rangers; public outreach efforts to inform and educate users on proper, minimum impact behavior; or development of facilities in other areas to draw use away from more vulnerable areas. The Idaho Constitutional

power of the Owyhee County Sheriff also possesses law enforcement power to those negatively affecting the resources on public lands.

### ***Increasing the Public's Understanding and Appreciation of Resources and Traditions***

The public, for the most part, is fascinated by and sympathetic towards Native Americans and would support the Tribes' efforts to preserve their cultural and religious heritage, but often are unaware of how they can help in that effort. Communication in a variety of media from individual members of the Tribes to the public explaining how religious and cultural practices are central to the existence of the Shoshone-Paiute and how those practices are being threatened by what they do on public lands would be powerful and could positively affect public behavior on remote public lands.

### ***Increasing Public Stewardship***

Many of the areas of public land where cultural resources have been vandalized, damaged or stolen are so remote and spread out over such a vast area that monitoring, surveillance or patrol of any given site is rare. Though increased field presence is a useful tool that needs to be emphasized, clearly it is not the whole answer to limiting damages to fragile cultural resources. Nor is wide-scale closure of sensitive lands a realistic answer. The public is often resentful when land managers declare even a small area of the public lands as off-limits to the public for any reason, and may ignore or subvert such closures.

A better strategy than assuming that all public land users are potential criminals is to instead appeal to their better nature. We need to enlist the public's support for protection of cultural resources by emphasizing that these resources belong not only to the Shoshone-Paiute, but to them and their future descendants as well. The public needs to know that protection of these rare and irreplaceable resources requires their vigilant and sensitive efforts so that future generations may enjoy them. The general public must be on our side in this issue, not against us, so that those few people who are engaged in looting and deliberate vandalism are viewed as criminals stealing from the public and are turned in by the public when observed doing these things.

Using individuals in organized user groups that represent hunters, motorized and non-motorized trail riders and other sportsmen's groups as well as new-age religious groups to get the message out about the problems and possible solutions is a good way to inspire responsible behavior in their peers in a non-threatening way.

## ***WHAT CAN BE DONE?***

### ***A STRATEGY FOR ADDRESSING THE ISSUES***

#### ***The Cultural Resources Protection Project***

The Cultural Resources Protection Project is proposed as a five-year **cooperative project** between the Shoshone-Paiute Tribes and other interested governmental agencies such as Owyhee County, the BLM, US Air Force, US Fish and Wildlife Service, the Idaho National Guard and others; administered under an agreement based on the government to government relationship. The agreement would allow for allocation of funding to either partner and facilitate exchange of funding in order to implement the elements of the strategy outlined below. Many of the elements of the strategy would be implemented by the Shoshone-Paiute Tribes because of their traditional connection with the public lands of southwest Idaho. All activities would be in compliance with public land laws, regulations, policies, procedures, and authorities.

During the five-year term, a fundamental goal of the project would be to institutionalize the activities and components of the strategy, integrating them into the participating agencies, and the Shoshone-Paiute Tribe's operations as well. Other partners in the project could include museums, academic institutions, The Wings and Roots Program, The State of Idaho, and not-for-profit organizations.

The CRPP is a multi-pronged strategy with six key components. These include:

1. Resource Inventory and Information Administration
2. Aerial Surveillance
3. Resource Monitoring and On-Site Public Contact
4. Site Preparation and Protection
5. Public Education and Building Appreciation
6. Tribal Outreach

#### ***Resource Inventory and Information Administration***

An essential first step in identifying and controlling the problem of loss or disturbance of tangible cultural resources and/or sacred sites is inventory. This inventory would involve both office and records search and some field survey by the tribes.

Sites that are significant need to be identified, described, and placed on maps so that appropriate needed attention such as increased surveillance, monitoring, signing, restriction of access, etc. can be applied.

Site condition needs to be determined, and a monitoring protocol that can detect disturbance or

change over time needs to be established. The Shoshone-Paiute Tribes are wary about telling anyone outside the Tribes about what and where, specifically, sacred sites are. The sensitivity of each site must be considered by the Tribes, and for places that they do not want to disclose to anyone else, the Tribes themselves must determine how to protect the site. Tribal Rangers would patrol particularly sensitive sites and alert BLM or other law enforcement officials when they observed actual physical disturbance, and affecting arrests when so needed under the authority of negotiated agreements with other agencies. In the case of individuals or groups that are, in the view of the Tribes, profaning the site by their presence (e.g., new age religious groups) but have not disturbed any tangible cultural resource, BLM may have no applicable law to enforce. Problems of this sort may best be addressed through outreach and educational efforts to the public by the Tribes. (See Public Education and Building Appreciation on page 13).

### ***Aerial Surveillance***

Native American sacred sites and significant archaeological sites are spread over a huge and often remote area of southern Idaho. There are typically few law enforcement personnel in the field at any one time, but particularly few during the weekends when the most recreational use occurs. This means that the chance of actually witnessing someone looting or vandalizing a site is remote unless more efficient organization and technology is employed to overcome the agency's considerable limitations.

Aerial surveillance during periods of high use (hunting seasons, spring through summer weekends, particularly Memorial Day, the 4<sup>th</sup> of July and Labor Day) could be targeted to focus scarce resources when and where they are most effective. Sensitive areas could be flown during high use periods, and using GPS and radio contact with enforcement networks on the ground could dispatch officers to investigate suspicious behavior, the presence of vehicles or people at sensitive sites, or obvious disturbance of cultural resources.

Some members of the Shoshone-Paiute Tribes are licensed pilots and with financial support, ground support including flight following, and coordination with Tribal Rangers and other local law enforcement agencies, could be used for this surveillance project.

### ***Resource Monitoring and Public Contact***

Since recreation-related impacts to sensitive cultural and biological resources are a rising concern, and much of the recreational use occurs on or around weekends, BLM should consider altering the schedules of a variety of its resource specialists so that they work these weekend high use periods. Recreation Planners, Park Rangers and Law Enforcement Rangers already do some of this, at least seasonally, but other resource specialists like Wildlife Biologists, Rangeland Management Specialists, Realty Specialists, Botanists and others who have substantial field duties might be considered for schedule changes that would put them into the field doing their normal field duties in sensitive areas during these high use weekends, as well. This would increase surveillance capabilities, establish an identifiable BLM field presence that does not now exist and allow BLM employees to make more positive contacts with the public. It

would also send a message to the law breakers that they can no longer assume that their chances of being observed on public lands on a weekend are negligible. A specific route would be scheduled and monitoring instructions and training provided for each visit. Training in appropriate strategies for approaching people in the field and getting a “Leave what you find” message to them in a non-threatening way would be given to each patroller, as well.

The Shoshone-Paiute Tribes through use of Tribal Rangers would patrol sites of importance to them. They will perform monitoring and document disturbance and will make public contact and outreach. They would be involved in enforcement or issuing citations, as well as serving as a link to law enforcement if criminal or suspicious behavior is observed.

### ***Site Preparation and Protection***

After sites are inventoried and evaluated, it may be determined by the tribes that specific measures must be taken to protect, prepare, or interpret them for visitation. Such measures could include requests to the BLM or other agencies for fencing, hardening, signage, or access management.

### ***Public Education and Building Appreciation***

*“As soon as a virtue is honored and practiced by some few men, it spreads through instruction and example to the young and eventually becomes incorporated in public opinion.”*

*Charles Darwin*

Education is probably the only lasting means through which we change the values of our society. The other methods we have outlined above are all highly useful and effective but are doomed to failure if they are the only means employed. Why? Because there are more of them (public land users) than there are of us (Indian and non-Indian governmental public servants). There are not enough enforcement officers or monitoring specialists or volunteers to control the growing tide of people using and sometimes abusing the sensitive resources of the public lands. Increased surveillance and flights, more precise monitoring, and increased enforcement of cultural resource laws are all good and necessary approaches to protecting fragile cultural resources. But lasting effectiveness requires that individuals become aware of the impacts of their actions and voluntarily make changes to lessen or eliminate those impacts. Methods are required that reach a mass audience and have the effect of making them think about what they are doing before they do it.

Effective education could proceed in a variety of ways:

#### ***School Curricula***

Each year every 4<sup>th</sup> grade student in the State of Idaho is taught a unit about Idaho history that

includes information about the Indians of Idaho. A lesson that taught ethics about respecting what is sacred to Native Americans would be appropriate and well-received by teachers and could be easily inserted into their current curriculum. This lesson could be the collaborative effort of the Shoshone-Paiute, Owyhee County, BLM, and local school districts.

### ***Multi-media Campaign***

A targeted multi-media campaign would be the most effective approach for reaching the relevant public land users and for affecting citizens' attitudes and behaviors about cultural resources and Native American traditions. This CRPP proposes to contract with public affairs professionals to work closely with the Shoshone-Paiute Tribes and other agencies to develop and implement a multi-media campaign to achieve the Project's goals. Such a campaign would include concept development as well as production and distribution of print, radio, and television products.

### ***Public Education and Building Appreciation***

While public service announcements can be very effective (e.g., BLM's fire safety awareness spots that have run on TV recently or the State of Idaho's campaign to curb poaching) in order to reach the target audience, the spots must run during prime time when there is a mass audience. In order to run during those times, time must be purchased at commercial rates. As mentioned above, Native Americans addressing the public on the issue would likely be convincing and effective to a sympathetic audience.

### ***Kiosks***

Construction of steel message boards, or kiosks at major entry points to sensitive cultural/sacred areas with displays that educated users in proper, ethical behavior would be an effective way to target the users who are likely to have effects on sensitive cultural resources just before they approach those resources. Care must be taken in exactly where these kiosks are placed. Our intention is not to guide the public to sensitive or sacred areas, merely to get a message to them as they approach these areas.

### ***Leave No Trace***

The Federal land management agencies have developed a public/private partnership in teaching and distributing information to the public about low-impact practices for recreational use. This program has national distribution, is financially supported by major outdoor equipment manufacturers and retailers like Nike and Coleman, and has a logo and principles that are increasingly recognizable by the general public. Part of Leave No Trace (LNT) emphasizes the principle of "Leave What You Find", that is, look and enjoy, but leave what you find undisturbed for the enjoyment of others who come after you. This principle fits nicely with what we are

trying to accomplish in this project. The LNT program has developed a great deal of useful material, including signs, lesson plans, brochures, activities and exercises that can be used to instruct clubs, schools or individuals in the field as to proper, low-impact behavior. The program has a network of qualified instructors in virtually every state that are eager to help in efforts such as this one.

### ***Agency/Tribal Outreach***

Joint County/State/BLM/Tribal cultural resource awareness presentations could be given to interested groups and organizations. This requires an investment in program preparation, production materials, personnel and travel costs.

The greatest bulk of the aforementioned programs will be fulfilled by Shoshone-Paiute Tribal Rangers with a focus of trained individuals with multi-disciplines in education, media, cultural resources, aviation and law enforcement.

A force of five tribal rangers will be created under the tribes' Cultural Resources Protection Program. They will be trained at the Idaho POST Academy and commissioned under the authority of the Owyhee County Sheriff. It would be desirable for the tribal rangers to also be supplementarily trained at either the federal training academy at Marana, Arizona or through the BLM law enforcement academy – in order to fulfill federal agency requirements for a contemplated, as-of-yet-still to be negotiated Law Enforcement Agreement between the tribes and the BLM.

Regardless of any other agency agreements outside of the Owyhee County Sheriff – the program is self-sufficient without BLM authority – relying upon State and County law. Tribal Rangers will be coordinated and dispatched by Owyhee County through payment from the project's annual appropriation.

Rangers will have the opportunity to be trained as pilots for the operation of monitoring and surveillance aircraft to be purchased and operated by the tribes. It is anticipated that the tribal aircraft will be available to assist the Owyhee County Sheriff in Search and Rescue operations as well as general law enforcement assistance.

### ***Additional Information***

For additional information please see Appendix I and Appendix II.

Appendix I: Historic Preservation Legislation - A Brief Overview in support of the Site Protection Plan for the BLM Lower Snake River District Office and the Shoshone-Paiute Tribes

Appendix II: Cultural Resources: Tribal Definition and Interpretation of Pertinent legal Mandates

## Appendix I

### **Historic Preservation Legislation A Brief Overview in Support of the Site Protection Plan for the BLM Boise and Twin Falls District Offices and the Shoshone-Paiute Tribes**

Preservation legislation in the United States has been built on the **Antiquities Act of 1906** which mandated fines and imprisonment for damage to sites on public lands. The Antiquities Act protects and preserves cultural properties without regard to minimum age. The president can designate outstanding properties as national monuments for long-term preservation. Members of the preservation community have subsequently lobbied congress to pass further legislation that had more “teeth” The result has been the passage of several laws since that time that address a variety of interests and concerns regarding cultural resources in this country. For purposes of the site protection project in the Boise and Twin Falls Districts, we have outlined specific legislation that addresses site protection on the ground for tangible and intangible cultural resources.

The **Historic Sites Act of 1935** declares national policy to identify and preserve “historic sites, buildings, objects and antiquities” of national significance, authorizing the National Historic Landmarks program of the National Park Service and providing a foundation for the later National Register of Historic Places.

The **National Historic Preservation Act of 1966 as amended** extends the policy of the Historic Sites Act to include State and local as well as national significance, expands the National Register of Historic Places, and establishes the Advisory Council on Historic Preservation, State Historic Preservation Officers, and a preservation grants in aid program. **Section 106** directs all Federal agencies to take into account effects of their undertakings on properties included in or eligible for the National Register of Historic Places, and **Section 110** sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. **Section 101** states that properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register. It is important to keep in mind that the sensitive nature of some types of traditional cultural properties may require confidentiality. Locational data is exempt from **FOIA** and **Section 304 of the NHPA** was amended to withhold information regarding historic properties disclosure to the public. Information may be withheld if disclosure would cause significant invasion of privacy or impede the use of a traditional religious site by practitioners. This expansion tends to blur distinctions between historic preservation and religious practice, between tangible places and intangible ideas. **Section 106** review states that a federal agency shall consult with any Indian tribe that

attaches religious and cultural significance to the properties described. The **1980 amendments** to the **NHPA (section 502)** directed the Secretary of Interior and the American Folklife Center to preserve and conserve the intangible elements of our cultural heritage such as arts, skills, folklife and folkways....to encourage the continuation of the diverse traditional ethnic and folk cultural traditions that underlie and are a living expression of our American heritage. While cultural intangibles have long been recognized as an inherent part of cultural resources it is time consuming and costly to conduct the ethnographic research to establish socio-cultural use of a historic or sacred site.

**Section 110 of the NHPA** requires that the agency's preservation related activities are carried out in consultation with other Federal, State and local agencies, Indian tribes...(E) that the agency's procedures for compliance with Section 106 provide a process for the identification and evaluation of historic properties for listing in the National Register and to develop and implement agreements regarding the means by which adverse effects on such properties will be considered.

**Executive Order 11593 of 1971** "Protection and Enhancement of the Cultural Environment," direct Federal Agencies to inventory cultural properties under their jurisdiction, to nominate to the National Register of Historic Places all federally owned properties that meet the criteria to use due caution until the inventory and nomination processes are completed and also to assure that Federal plans and programs contribute to preservation and enhancement of nonfederally owned properties. Some of the provisions are also found in Section 110 of National Historic preservation Act.

The **Archaeological Resources Protection Act of 1979** provides felony-level penalties, more severe than those of the Antiquities Act of 1906 for unauthorized excavation, removal, damage, alteration, defacement, of any archaeological resource more than 100 years of age, found on public lands or Indian lands. The act also prohibits the sale, purchase, exchange, transportation, receipt, or offering of any archaeological resource.

The **American Indian Religious Freedom Act of 1978** resolves that it shall be the policy of the United States to protect and preserve for the American Indian, Eskimo, Aleut, and Native Hawaiian the inherent right of freedom to believe, express, and exercise their traditional religions, including but not limited to access to religious sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites. Federal agencies are directed to evaluate their policies and procedures to determine if changes are needed to ensure that such rights and freedoms are not disrupted by agency practices. The act, a specific expression of First Amendment guarantees of religious freedom, is not implemented by regulations. (Note: A U.S. Court of Appeals has determined that there is a compliance element in the AIRFA, requiring that 1. The views of Indian leaders be obtained and considered when a proposed land use might conflict with traditional Indian religious beliefs or practices, and that 2. Unnecessary interference with Indian religious practices be avoided during project implementation, but specifying that 3. Conflict need not necessarily bar Federal agencies from adopting proposed land uses in the public interest.)

**ARPA** and **AIRFA** cover different domains of religious activity. They overlap somewhat

because both include the protection of archaeological sites with sacred attributes. AIRFA covers sites currently in use and ARPA applies to archaeological resources that are at least 100 years old. In many cases both laws could be called into play, i.e., an archaeological site over 100 years old being used for current religious practices. AIRFA explicitly calls for consultation (Sec.2) between Federal land managers and Indian communities while ARPA stipulates only notification (Sec. 4c) The mechanisms for compliance with these two laws as they relate to cultural resources should vary with the likelihood of religious sites being affected by BLM permitted actions. The probability of encountering sites with sacred attributes will be largely dependent upon the **amount** and the **type** land to be impacted by any proposed action. AIRFA will come into play when a site, regardless of its relative antiquity is currently believed to possess sacred aspects and / or is used for religious purposes. (Deaver 1986)

**ARPA 1979** Excavation and Removal Sec.4 (a) (c) states that “If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance.” Such notice shall not be deemed a disclosure to the public for purposes of section 9. Any physical changes to a site with sacred attributes such as routine collections of artifacts and testing may constitute harm to such sites. Protection under ARPA applies to archaeological resources which are at least 100 years old and has civil and criminal penalties.

Two other important pieces of legislation regarding protection of cultural resources are **National Environmental Policy Act of 1969 (NEPA)** and **Federal Land Policy and Management Act of 1976 (FLPMA)**. NEPA establishes national policy for the protection and enhancement of the environment. Part of the function of the Federal Government in protecting the environment is to “preserve important historic, cultural, and natural aspects of our national heritage. **FLPMA** directs the BLM to manage public lands on the basis of multiple use, in a manner that recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands” and will “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” The act provides for long-range, comprehensive land use planning, for permits to regulate the use of the public lands, and for the enforcement of public land laws and regulations. FLPMA is the primary basis for managing cultural resources on the public lands.

The **Native American Graves Protection and Repatriation Act of 1990** establishes rights of Indian tribes and Native Hawaiian organizations to claim ownership of certain “cultural items” including human remains, funerary objects, sacred objects, and objects of cultural patrimony held or controlled by Federal Agencies and museums that receive Federal funds. The act requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native American groups toward their repatriation. Permits for the excavation and / or removal of “cultural items” protected by the act require Native American consultation, as do discoveries of “cultural items” made during land use activities.

**Executive Order 13007 of 1996** for protection of Sacred Sites requires Federal agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. Where

appropriate agencies shall maintain the confidentiality of sacred sites.

## **Cultural Resources A Definition**

### **BLM - 8100 - Policy Manual:**

**Cultural:** “of or pertaining to culture, the regularized, patterned, learned behavior shared by members of an interacting social group and passed from generation to generation, comprising the group’s technology, economy, religion, arts, social organization, and more. A group’s partly subconscious consensus on how things are done. Aspects of culture vary among contemporary groups and change through time. Culture may be viewed as a complex set of instrumental behaviors interposed between a group and its natural and social environment, and may be said to constitute the group’s adaptation to its environment.”

**Cultural resource or cultural property:** “a definite location of human activity, occupation, or use identifiable through field inventory (survey), historical documentation, or oral evidence. The term includes archaeological, historic, or architectural sites, structures, or places with important public and scientific uses, and may include definite locations (sites or places) of tradition cultural or religious importance to specified social and/or cultural groups. Cultural resources are concrete, material places and things that are located, classified, ranked, and managed through the system of identifying, protecting, and utilizing for public benefit described in this Manual series.”

**Traditional life way value:** “a social and/or cultural group’s traditional patterns of religious belief, cultural practice, or social interaction. Traditional life way values sometimes imbue cultural resources with significance. They can be identified through consultation and considered through public participation during planning and environmental review. The BLM does not manage people’s values, beliefs, or social systems.

## Appendix II

### **Cultural Resources: Tribal Definition and Interpretation of Pertinent Legal Mandates**

In the previous discussion of cultural resource protection between the Shoshone-Paiute Tribes and the Idaho BLM, both parties agreed on the need to clarify the use of the term “cultural resources.” While the BLM and other federal agencies have tended to restrict the term to describe archaeological resources, the Tribes have come to use the term in a more broad, face-value sense of “any resource needed to continue to freely engage in and preserve the practices and traditions of the Shoshone-Paiute culture.” The following lists several types of things which the Tribes consider to be “cultural resources.” It must be emphasized that this list is not exhaustive, but is intended to provide an idea of the range of what are considered to be “cultural resources” for illustrative purposes only at this time. Purely intangible resources are not listed.

- A. Sacred sites and relevant aspects of their environmental context (e.g. view shed, pristine surroundings)
- B. Biological resources (plants, animals, fungi, lichens, mosses, etc.)
- C. Mineral resources
- D. Earth and Water resources
- E. Archaeological sites
- F. Burial grounds
- G. Sites of historical significance (e.g. battlefields, treaty signing sites)
- H. Other resources to be identified during consultation

Cultural resources can be significant to Shoshone-Paiute culture for their subsistence, economic, religious/spiritual, medicinal, historical, and other values. Any particular resource may be valued at several levels, for example, an object may have spiritual significance in addition to its utilitarian function. A resource may also fall into more than one of the above listed categories, for example a battlefield would potentially fall simultaneously into categories A, D, E, and F, therefore such categories are not necessarily mutually exclusive. Since federal mandates regarding cultural resources tend to focus on certain categories of resources, it is possible for several mandates to apply simultaneously to a particular resource.

### Applications of Federal Mandates

The Shoshone-Paiute Tribes have found the following mandates especially useful for the protection of Tribal cultural resources. This listing is not intended to be exhaustive but rather to provide a draft indicating those mandates which are most relevant to the current cooperative

effort between the Tribes and the Idaho BLM to enhance protection of Tribal cultural resources. The Tribes or the BLM may wish to add to this listing as further discussion and consultation warrants.

- A. American Indian Religious Freedom Act
- B. Native American Graves Protection and Repatriation Act
- C. National Historic Preservation Act and Bulletin 38
- D. Executive Order #13007 on Sacred Sites
- E. Archaeological Resources Protection Act
- F. Executive Orders Establishing the Shoshone-Paiute Reservation
- G. National Environmental Policy Act
- H. Federal Land Policy Management Act
- I. Endangered Species Act
- J. Executive Order #12875 on required Government-to-Government Consultation
- K. Executive Order #12898 on Environmental Justice

The following discussion illustrates some Tribal interpretations and applications associated with the above listed mandates.

Most of the above listed mandates require government-to-government consultation as part of the implementation process. The Wings and Roots program between the Tribes and the BLM is becoming a model for effective consultation. Bulletin 38 suggests a comparable approach as a means of identifying potential impacts to cultural resources (specifically TCPs) during the agency planning process thus offering the opportunity to protect the resource through avoidance. By extension, Wings and Roots is a process where potential impacts to all cultural resources (not only TCPs) can be evaluated, and where relevant federal mandates can be identified and applied to specific situations.

Intangible aspects of cultural resources are integral to their significance to the Tribes Bulletin 38 discusses how intangible elements can apply to properties that otherwise have no evidence of human activity, making them eligible for inclusion in the National Register. Obviously, in such case an agency cannot know of the intangible significance until this has been indicated by the Tribes. The procedures used for nominating sites to the National Register are useful for establishing significance with section 106 of NHPA by using this method without actual nomination in the interest of preserving Tribal confidentiality. Similarly, determination of which items are subject to NAGPRA, or what constitutes a sacred site also frequently depend on their intangible aspects (e.g. beliefs and practices associated with them), hence input from knowledgeable Tribal members is essential. Again, intangible aspects of these resources determine their status under law, and only Tribal members can know the intangible aspects.

Archaeological sites and their contents have until recently been treated as public property valued as a scientific resource largely under the control of archaeologists, anthropologists, and similar professionals. Resource protection mandates such as ARPA were largely intended to protect these interests. NAGPRA recognizes that archaeological sites and objects may have religious or other intangible significance to Tribal members, and it is a human right of Native Americans to control the disposition of certain sites and objects. When considering the intangible significance of archaeological sites, such places may also be considered to be sacred sites and/or traditional

cultural properties, affording them additional protection from institutional disturbance. The Tribes seek protection of archaeological sites and their contents from scientific disturbance such as collection, excavation, or display. ARPA allows scientific research to be permitted, but also requires consultation with Tribes likely to be affiliated with such sites as part of the permit granting process. If during such consultation the Tribes object to scientific disturbance on the grounds that such sites are sacred or have religious significance (which has been ethnographically documented and summarized in the NAGPRA Executive Summary), human rights mandates such as AIRFA, NAGPRA, and E.O. 13007 should weigh in the agency's decision whether or not to grant a research permit.

Various mandates also apply to plant, animal, and mineral resources. Bulletin 38 notes that areas where significant resources (e.g. biological or mineral resources for subsistence, medicinal, or religious purposes) are available and can be eligible for inclusion on the National Register. Again, intangible aspects can be involved, such as where a certain area containing an otherwise widespread resource is particularly valued. The Endangered Species Act may enter the picture in some cases. The intangible aspects associated with these resources may tie them to AIRFA or E.O. 13007 in instances where their spiritual importance is emphasized.

The executive orders establishing the Duck Valley Indian Reservation and other legal principles surrounding the formation of reservations also afford various sovereign rights to Tribal resources. The Department of Interior notes that Tribal members generally have the sovereign right to continue traditional practices of all kinds (sometimes referred to as "the law of the land") on their traditional homelands except for those rights explicitly extinguished by treaty, executive order or other specific mandated. Under this concept, destruction or reduction of resources can be viewed as a violation of such rights in many instances, such as the current situation of the salmon. The concept of "usual and accustomed places" underlies legislation such as E.O. 13007, and protects the unextinguished rights of Tribal members to access areas and resources of cultural importance.

This discussion has outlined a Tribal interpretation of cultural resources and the mandates which can apply to their protection. Central principles include:

1. Frequently more than one mandate applies to a particular cultural resource.
2. The legal status of a particular resource often depends on its intangible aspects, i.e. the cultural context of beliefs, practices, and values associated with it.
3. Only the Tribes can establish the significance of such intangible aspects.
4. Intangible aspects often tie cultural resources to religious rights protection or other human rights mandates.
5. Tribal sovereignty establishes a unique relationship between Tribes and the federal government. In weighing factors pertaining to the "multiple use" concept of land management, the unique sovereign rights of Tribes should be carefully considered in cases of potential conflict with the interests of special interest groups or the general public.

A critical issue which is not addressed here is the confidentiality of cultural information. The Tribes are aware of potential problems arising from inappropriate parties gaining access to cultural information, especially descriptions of location and certain "intangible" aspects of

various resources. At the same time such information is critical to on-the-ground protection of these resources. Discussion and resolution of this issue is a logical next step in the goal of cultural resource protection.